REMARKS

Reconsideration of this application, as amended, is respectfully requested.

The invention enables a single switch fabric and backplane bus using ethernet technology. Vargos does not teach or suggest the receiving of a TDM data frame from an inbound TDM data stream at an Ethernet switch. Indeed, Vargos provides no mention of TDM data nor does Vargos provide any mention of Ethernet technology. Vargos is concerned with addressing latency issues related to transmitting voice data over the internet. Vargos provides for voice transmission at an originating phone where:

> an analog signal is conventionally communicated to a public system telephone network (PSTN). Analog packets are then generated and transmitted to a gateway where the analog PSTN voice packets are digitized. A destination gateway and destination transmux are then identified and communicated to the gateway over a separate TCP/IP link. The destination gateway address and destination transmux address are appended to the voice packet in the gateway, and the packets are then aggregated and transmitted to an originating transmux. Gateway voice packets are received from the gateway in the transmux and broken into gateway subpackets. The gateway subpackets are aggregated by their destination transmux address. The destination transmux addresses are then removed from the gateway subpackets and the transmux voice packet is then transmitted across an internet network to a destination transmux. Within the destination transmux, the transmux voice packets are received and broken into transmux subpackets. These transmux subpackets are sorted and aggregated by their destination gateway addresses. Unneeded destination gateway addresses are then removed and the destination voice packets are then transmitted to a destination gateway. Within the destination gateway, the destination voice packets are received and converted to analog voice packets and transmitted to a destination PSTN. Once at the destination PSTN, the voice packets are then converted for transmission to a destination phone.

However, Vargos does not teach or suggest receiving TDM data. Moreover, Vargos does not teach or suggest transporting TDM data across an Ethernet switch. Accordingly, the claims are patentable over Vargos.

Even adding the teachings of Jeng does not render the present invention obvious. Jeng merely provides a scheme for converting T1/E1 HDSL frames into Ethernet MII packets.

There is no discussion of receiving a TDM data stream at an Ethernet switch and converting the TDM data within the TDM data stream into Ethernet packets. Indeed, Jeng does not teach or suggest the time-division multiplexing (TDM) technology. Accordingly, the claims are patentable over the combination of Vargos and Jeng.

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The combination of these references themselves are also suspect. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention in which there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The Office Action indicates that the references cannot be argued individually when cited in combination, but fails to recognize that such combinations are themselves improper when no motivation for the combination is shown. Indeed, rather than show any reasons for the recited combinations, it appears the teachings of the present application have been used as a blueprint to gather together and assemble various components of the prior art in the manner contemplated by the present applicant. This approach is a classic example of the use of hindsight reconstruction and cannot properly be used as grounds for rejecting the present claims.

The U.S. Court of Appeals for the Federal Circuit has strongly criticized such use of hindsight by specifically indicating that when an obviousness determination is made based upon a combination of references, even a patent examiner "must show reasons that the skilled artisan, confronted with the same problems as the inventor *and with no knowledge of the claimed invention*, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (Emphasis added). The Examiner merely arguing in his Office Action of January 29, 2003 that the claimed invention would be obvious to one of ordinary skill in the art based on the combination of the references is utterly inadequate. *Rouffet*, at 1357. Instead, a motivation, either from the references themselves or the knowledge of those of ordinary skill in the art, for the combination being relied upon needs to be shown. *Rouffet*, at 1357.

In the present case, no such motivation has been shown. Instead, the Examiner attempts to deconstruct the subject matter of the claims of the present application into its constituent components. He further states where each such component may be found in one of the cited references and then concludes that it would have been obvious to combine the references to arrive at the claimed invention. This bare bones analysis is not sufficient to support a determination of obviousness of the present application. The burden is on the Examiner to show *why* one skilled in the art is so motivated as to come up with the combination being relied upon. *Rouffet*, at 1357-1358 ("If such a rote invocation could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance. Instead, in complex scientific fields [an infringer or the Patent Office] could routinely identify the
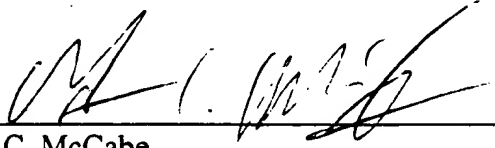
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prior art elements in an application, invoke the lofty level of skill, and rest its case for [obviousness]. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness."). Accordingly, the present rejections under 35 U.S.C. §103(a) should be removed.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

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